



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडियो के बाजु मे, नवरंगपुरा ,अहमदाबाद 380009
दूर भाष (079) 2754 46 30 फैक्स (079) 2754 23 43

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.: VIII/10-01/Commr./O&A/2023-24

DIN- 20240571MN0000333ADB

आदेशकीतारीख/Date of Order :17.05.2024
जारीकरनेकीतारीख/Date of Issue : 17.05.2024

द्वारापारित :- शिव कुमार शर्मा, प्रधान आयुक्त
Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-16-2024-25 dtd.17.05.2024
in the case of **M/s. Polycab India Limited**, Unit 4, Plot No.105, Halol Vadodara Road,
Village: Nurpura, Taluka Halol, Dist- Panchmahal, Gujarat – 389350

- जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
- This copy is granted free of charge for private use of the person(s) to whom it is sent.
- इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन , गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
- Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.
- उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम)

कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्ष जुरमाना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. VIII/10-01/Commr./O&A/2023-24 dated 30.05.2023 issued by the Commissioner of Customs, Ahmedabad to **M/s. Polycab India Limited**, Unit 4, Plot No.105, Halol Vadodara Road, Village: Nurpura, Taluka Halol, Dist-Panchmahal, Gujarat - 389350 (Head office at Polycab House, 771, Pandit Satwalekar Marg, Mogul Lane, Mahim (W), Mumbai-400016)

Brief facts of the case:

M/s. Polycab India Limited, Unit 4, Plot No.105, Halol Vadodara Road, Village: Nulpura, Taluka Halol, Dist- Panchmahal, Gujarat - 389350 (Head office at Polycab House,771, Pandit Satwalekar Marg, Mogul Lane, Mahim (W), Mumbai-400016) (hereinafter referred to as 'the Importer' or 'the Noticee' for the sake of brevity), having IEC 0397003498, is engaged in the import of Antimony Trioxide falling under Customs Tariff Heading No. 28258000 of the First Schedule to the Customs Tariff Act, 1975.

2. Based on intelligence, an investigation was initiated by the Directorate of Revenue Intelligence, Surat Regional Unit, against M/s.Polycab India Limited. Intelligence gathered by Directorate of Revenue Intelligence (DRI), Surat Regional Unit, indicated that various importers including M/s. Polycab India Limited were engaged in import of Antimony Trioxide from Thailand and availed benefit of Country of Origin as provided in Notification No.46/2011-Customs dated 01.06.2011, as amended, though the manufacturer/supplier does not meet the criteria of Rules of Origin under AIFTA. "Antimony Trioxide" is classified under Customs Tariff Heading No.28258000 of the first Schedule to the Customs Tariff Act and effective rate of Duty on this product was 7.5% ad-valorem as per Notification No.50/2017-Cus dated 30.06.2017, as amended (Sr.No.169).

3. Investigation was initiated by DRI against the Importer for Duty evasion on import of Antimony Trioxide from Thailand under Summon proceeding. Summons dated 04.10.2021 & 14.10.2021 was issued to the Importer for recording statement. In response, Shri Chetan Deshmukh, Vice-President (Head-Exim) of the Importer appeared and submitted two files (Page 1 to 50 & Page 1 to 50) containing documents relating to import of Antimony Trioxide from Thai Unipet Industries Co Ltd., under his statement recorded on 18.10.2021. Further, the Importer vide letter dated 29.10.2021 submitted the copies of documents related to import of Thailand origin Antimony Trioxide from Youngsun Chemicals Co. Ltd., China and Demand drafts of differential Duty payable.

4. The Deputy Director, DRI, Surat vide letter F.No DRI/AZU/SRU/B/INV-04(INT-8)/2021 dated 27.10.2021 called for the Docket files pertaining to import of Antimony Trioxide by the Importer from the Deputy Commissioner of Customs, ICD Tumb. The Deputy Commissioner of Customs, ICD Tumb vide letter F.No. VIII/ICD-Tumb/32/COO-Verification/2020-21 dated 03.12.2021 & 21.02.2022 had forwarded the copy of docket files, submitted by the Importer during import of Antimony Trioxide from Thailand at ICD Tumb (INSAJ6).

5. The Importer had filed W/H Bill of Entry No. 9178364 dated 14.10.2020 (Ex Bond Bill of Entry No.2615213 dated 04.02.2021) and Bill of Entry No.9178366(for Home Consumption) dated 14.10.2020 at ICD Tumb for clearance of Antimony Trioxide imported from Thai Unipet Industries Co. Ltd and availed the AIFTA benefit, details as under:

Sr No	Bill of Entry No & Date	Quantity of goods (MT)	Invoice No & date	COO No & date	Remarks
1	9178366 dt 14.10.2020	20	TUP2009017 dated 21.09.2020	AI2020-0035333 dt. 06.10.2020	Provisional
2	9178364 dt 14.10.2020	20	TUP2009016 dated 21.09.2020	-	W.H. B/E (Provisional)
3	2615213 dt 04.02.2021	20	TUP2009016 dated	AI2020-0035331 dt.	Ex Bond B/E

		21.09.2020	06.10.2020
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5.1 The Importer vide letter dated 09.11.2020 addressed to Dy. Commissioner of Customs Tumb, submitted that:

"We are not in a position to furnish BG and hence request you to allow clearance of the subject consignment under merit duty with basic duty @7.5% under notification no.050/2017. Sr No. 169 as the said consignment has arrived on 23rd October and the delay is only adding to demurrage & detention cost to us. However, we wish to deposit the duty under protest and request the department to kindly proceed with the verification process which will help the merit to decide the case."

5.2 The Importer has furnished Provisional Duty Bond against the Bill of Entry No. 9178366 dated 14.10.2020 and paid BCD of Rs.5,86,687/- and SWS Rs.58,668/- under protest in terms of their letter dated 09.11.2020. Further, the Importer had filed Ex-Bond Bill of Entry No.2615213 dated 04.02.2021 for clearance of 20MT of Antimony Trioxide imported vide W.H. Bill of Entry No.9178364 dated 14.10.2020 and on account of Final Assessment, the Importer has paid differential Duty of Rs.7,61,521/- along with interest of Rs. 58,835/- vide TR-6 Challan No.164 dated 07.08.2021.

6. Investigation in respect of past consignments imported by the Importer:

6.1 During investigation, it appears that the Importer had been importing Antimony Trioxide from Thailand based manufacturer since 21.06.2018 and cleared the same through ICD Tumb and Nhava Sheva Sea Port. The goods were manufactured by Thai Unipet Industries Co. Ltd., Thailand. It is pertinent to mention that the Importer has filed Bill of Entry Nos.9178366 dated 14.10.2020 and 2615213 dated 04.02.2021 at ICD Tumb for clearance of Antimony Trioxide and paid Customs Duty without benefit of exemption Notification No.46/2011-Cus dated 01.06.2011, as amended, under protest vide letter dated 09.11.2020 addressed to the Deputy Commissioner of Customs, ICD Tumb. Further, verification had been conducted under CAROTAR and the verification reports pertained to both consignments have been received from the Thailand authorities wherein they have stated that *"The exporter, THAI UNIPET INDUSTRIES CO. LTD. declared that the products shown on the above mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI. ..."*. Thus, it appears that the imported goods does not meet the origin criteria and therefore, not eligible for benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended. Therefore, it appears that the protest lodged by the Importer at the time of Duty payment against the Bills of Entry No.9178364 dated 14.10.2020 and 9178366 dated 14.10.2020 is required to be revoked and Duty paid therein under protest is liable to be appropriated.

6.2 The Importer had imported a number of consignments of Thailand origin Antimony Trioxide from supplier M/s. Youngsun Chemicals Co. Ltd, China and M/s Thai Unipet Industries Co. Ltd., Thailand and availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended at ICD Tumb and Nhava Sheva sea port. The Importer had imported total 36 consignment of Antimony Trioxide through ICD Tumb & Nhava Sheva sea port. M/s Thai Unipet Industries Co. Ltd., Thailand was the manufacturer of all the 36 consignments of Antimony Trioxide imported by the Importer. It also appears that in case of 4 consignments of Antimony Trioxide imported by the Importer at ICD Tumb, the Importer had paid differential Duty in respect of Bill of Entry No.8747927 dated 08.09.2020, 8733389 dated 07.09.2020, 8849048 dated 17.09.2020 & 8849768 dated 17.09.2020 on account of assessment of Bill of Entry without the benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended. The Importer had wrongly availed the benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended and short paid the Customs Duties of

Rs.2,69,67,319/- (details as per Annexure-A attached to this Show Cause Notice) at ICD Tumb & Nhava Sheva sea port, summarized as below:

SUMMARY OF ANNEXURE-A

Port of Import	Total no. of consignments	Value of goods (in Rs.)	Total Customs duty involved (in Rs.)
ICD Tumb	25 (including 2 BEs wherein Duty paid under protest)	205082940	19964824
Nhava Sheve Sea Port	7	71931125	7002495
TOTAL	32	27,70,14,065	2,69,67,319

7. Statements recorded under Section 108 of the Customs Act, 1962:-

7.1 Statement of Shri Chetan Deshmukh, Vice President (Head- Exim) of Polycab India Ltd. was recorded on 18.10.2021 before SIO, DRI, Surat under Section 108 of the Customs Act, 1962 wherein he *interalia* stated that:

- a. Polycab India Ltd. was engaged in manufacturing of wires, cables, switches, fans etc. and its manufacturing units were situated at Daman and Halol; that there were 8 Directors in Polycab India Ltd viz. Shri Nikhil Ramesh Jaisinghani, Shri Pradeep Narendra Poddar, Shri Sutapa Banerjee, Shri Rakesh Chandrakant Talati, Shri Radhey Shyam Sharma, Shri Tilokchand Punamchand Ostwal, Shri Bharat Ajay Jaisinghani & Shri Inder Thakurdas Jaisinghani; that out of these eight Directors, four Directors were active Directors and Shri Inder Thakurdas Jaisinghani was Chief Managing Director and looked after all the affairs of the Company, Shri Nikhil Ramesh Jaisinghani was in-charge of the wire business, Shri Bharat Ajay Jaisinghani was in-charge of the business other than wires and cables and Shri Rakesh Chandrakant Talati was the manufacturing head of wires and cables; that he reported to Shri Sandeep Bhargav Chief Procurement officer; that the import dealing of Antimony Trioxide was being looked after by Shri Rashmikanth Mehta;
- b. On being asked, regarding his role in the Company, he stated that he was sitting in Head Office at Polycab House, 771, Pandit Satwalekar Marg, Mogul Lane, Mahim (W), Mumbai-400016 and looked after logistics and shipping work related to import - export and export benefits schemes related to DGFT; that he also handled the import & export clearance of his Firm.
- c. On being asked, he stated that his Company used to import Antimony Trioxide, Copper cathode and compounds (PVC & XLPE); that his Company used to import Antimony Trioxide classified under Customs Tariff Heading No.28258000 from Thai Unipet Industries Co. Ltd., Thailand, and Youngsun Chemicals Co. Ltd., China at ICD Tumb and Nhava Sheva Port; that in case of supplier Youngsun Chemicals Co. Ltd., China, manufacturer & shipper of Antimony Trioxide was Thai Unipet Industries Co. Ltd, Thailand.
- d. On being asked, he stated that they used Antimony Trioxide alongwith PVC Resin to manufacture cables sheath;
- e. The first consignment of Antimony Trioxide of Thailand origin was imported in 2018 from Youngsun Chemicals Co. Ltd., China; that M/s. Polycab India Ltd. had imported total 36 consignments of Antimony Trioxide in which Thai Unipet Industries Co. Ltd. was manufacturer/producer;

- f. He had produced two files (Page No 1 to 50 & Page No. 1 to 50) containing invoices, Bill of Entry, COO related to import of Antimony Trioxide from Thai Unipet Industries Co. Ltd., Thailand at Nhava Sheva Port & ICD Tumb; that his Company had imported 24 consignments of Antimony Trioxide from Youngsun Chemicals Co. Ltd., China, at ICD Tumb wherein name of manufacturer & shipper was Thai Unipet Industries Co. Ltd;
- g. The Bills of Entry No.9178366 dated 14.10.2020 and 2615213 dated 04.02.2021 were provisionally assessed at ICD Tumb and both Bills of Entry were finally assessed without granting benefit of COO issued in case of Antimony Trioxide imported from Thailand; that they have already paid the differential Customs Duty at ICD Tumb against both the finally assessed Bills of Entry.
- h. On being asked regarding the import of Thailand origin Antimony Trioxide after provisional assessment of Bill of Entry No.9178366 dated 14.10.2020, he stated that his Company had started import of the identical goods at Nhava Sheva since December-2020; that on being asked the reason he stated that the consignments were destined to Nhava Sheva Port, thus they filed Bill of Entry at Nhava Sheva for clearance of goods;
- i. Import of Antimony Trioxide from Thai Unipet Co. Ltd. were handled by their CHAs viz. Vaishali Enterprise & Delight Logistics Pvt. Ltd. (formerly known as CBX Logistics) at Nhava Sheva Port and Jet Cargo Movers & Delight Logistics Pvt Ltd (formerly known as CBX Logistics) at ICD Tumb.
- j. On being asked whether his Company possessed sufficient information as regards the manner in which Country of origin criteria, including the regional value content and product specific criteria is specified in Section 28DA(ii) of the Customs Act, 1962, he stated that they had a manufacturer's declaration dated 22.09.2020 by Thai Unipet Industries Co. Ltd and he submitted the same.
- k. On being shown CBIC's letter F.No.456/89/2020-CUS.V dated 01.07.2021 issued to The Pr. Commissioner of Customs, Ahmedabad by the OSD (FTA Cell-I) enclosing letter No.0307.07/487 dated 29.06.2021 issued to Shri Manoranjan Sahu, Embassy of India, Bangkok by the Director of Import Administration and Origin Certificate Division, Dept. of Foreign Trade, Thailand along with its attachments, he stated that two COO's with reference Nos. A12020-0035331 dated 06.10.2020 and A12020-0035333 dated 06.10.2020, said to be issued in Thailand, for export of Antimony Trioxide under AIFTA, were forwarded by the Ahmedabad, Customs for verification; that on verification, it has been informed by the issuing authority that the products declared by the exporter i.e. Thai Unipet Industries Co. Ltd. in the COOs were not qualified as originating goods in Thailand. Hence, the issuing authority has revoked the products mentioned on the COOs. In token of having read, understood and explained, he put his dated signature on both the letters.
- l. On being asked, he stated that verification report was also applicable in case of identical goods i.e. Antimony Trioxide imported by them from the same manufacturer/producer i.e. Thai Unipet Industries Co. Ltd. in terms of CAROTAR Rules prescribed under Section 28DA of the Customs Act, 1962; that he agreed that his Company was not eligible to avail the benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, on the import of Antimony Trioxide from Thai Unipet Industries Co. Ltd.
- m. They have availed exemption of BCD amounting to approximately Rs.2.82 crore on import of Antimony Trioxide during the period from June-2018 to Apr-2021; that they had not imported Thailand origin Antimony Trioxide after April-2021;

that they had wrongly availed the benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, and they were voluntarily ready to repay the wrongly availed exemption of BCD with interest within a week; that during the course of investigation, if any other liability of payment of Duty arose, they also agreed to pay the same.

8. Information available with Importer in terms of Section 28DA of Customs Act, 1962:

8.1 Shri Chetan Deshmukh, Vice President (Head-Exim) stated during his statement that they have a manufacturer's declaration dated 22.09.2020 by Thai Unipet Industries Co. Ltd and submitted the same before Customs. It appears that the manufacturer M/s. Thai Unipet Industries Co. Ltd declared that antimony concentrate (HS Code 2617.1000) was used for the manufacture of antimony trioxide (H.S. code 2825.8000) which confirmed to the origin criterion by adding Regional Value Addition of over 40% and change in Tariff Head. The scanned image of Manufacturer's declaration dated 20.09.2020 is as below:

[SCANNED IMAGE OF MANUFACTURER'S DECLARATION DATED 20.09.2020]

THAI UNIPET INDUSTRIES CO., LTD
889 MOO 5, BANGBUATONG-SUPHANBURI RD.
TAMBOON SANI NUEANG, AMPHUR LAT BUA LUANG, PHRA NAKHON SIAYUTTHAYA
13230 THAILAND
TEL: (66) 3502764 FAX: (66) 3502765

Manufacturer's declaration

Date: 20th September, 2020

We, as the manufacturer, hereby declare that antimony concentrate (H.S. code 2617.1000) is used for the manufacturing of antimony trioxide (H.S. code 2825.8000) which confirms to the origin criterion by adding Regional Value Addition of over 40% and change in tariff head.

For POLYCARB INDIA LTD.
M. Chetan
Authorized Signatory

On behalf of
Thai Unipet Industries Co., Ltd.
Apisith Wan
Import & Export Dept. of
Thai Unipet Industries Co., Ltd.

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11-10-2021

Produced by me
G. Jadhav
12/10/24

Pg no. 11 to 50

THAI UNIPET INDUSTRIES CO., LTD

58/4 MOO 5, BANGBUIATONG-SUPHANBURI RD.,
TAMBON SAMNUEANG, AMPHOE LAT BUA LUANG, PHRA NAKHON SIAYUTTHAYA
13230 THAILAND.
TEL:(66)35902764 FAX:(66)35902765

Description of goods	Production process	Originating Criterion adopted
1. Antimony Trioxide (HS code: 2825.8000)	The production process includes the following steps: <ol style="list-style-type: none"> 1. Antimony concentrate (HS code 2617.1000; imported from Myanmar), together with anthracite and soda ash, is put through a reverberatory furnace to produce antimony metal as an intermediate product; this process requires diesel and electricity as energy source 2. Antimony metal is then turned into antimony trioxide through an antimony trioxide furnace; this process requires diesel and electricity as energy source 3. The antimony trioxide powder is then packed with flexible container bags, wooden pallets, and paper bags to become the final product ready for export; we consider packaging as forming a whole with the product 	RVC + CISH

Material used in manufacturing process

Description of the originating material or component	Whether manufactured by producer of final goods	Whether procured by producer from from third party (Yes or no)	If these case procured from third party, did producer of final goods seek confirmation and documentary proof of origin of these goods
1. Anthracite	No	Yes	Yes, purchase order and invoice will prove.
2. Diesel	No	Yes	Yes, purchase order and invoice will prove.
3. Soda ash	No	Yes	Yes, purchase order and invoice will prove.

For POLYCARB INDIA LTD.

Manda
Authorized Signatory

4. Electricity	No	Yes	Yes, purchase order and invoice will prove.
5. Flexible container bag	No	Yes	Yes, purchase order and invoice will prove.
6. Wooden Pallet	No	Yes	Yes, purchase order and invoice will prove.
7. Paper bag	No	Yes	Yes, purchase order and invoice will prove.

Additional information:

a.	Is the de minimis provision used to determine whether the good subject to this request qualifies as an originating good?	<input type="radio"/> Yes <input checked="" type="radio"/> No ✓ If yes, describe such material and the percentage value or quantity as applicable.
b.	Is the accumulation/cumulation provision applied to determine whether the good subject to this request qualifies as an originating good?	<input type="radio"/> Yes <input checked="" type="radio"/> No ✓ If yes, describe the manner and extent of cumulation
c.	Has any other additional criteria such as indirect/neutral materials, packing materials, etc used in ascertaining whether the good qualifies as an originating good.	<input checked="" type="radio"/> Yes ✓ <input type="radio"/> No If yes, provide the criteria used: - Packing material is considered as forming a whole with products. (AJFTA Rule 9(b)) Describe the material concerned: - Flexible container bags, wooden pallet, paper bags
d.	Is the originating criteria based on value content?	<input checked="" type="radio"/> Yes ✓ <input type="radio"/> No If yes, provide the following: (i) percentage of local value content: 51.03% (ii) components which constitute value addition (e.g. material, profit, labour, overhead cost, etc.): - Raw material (anthracite and soda ash), packing material, electricity, fuel, labour, overhead cost, rental etc.
e.	Has CTC rule been applied for meeting originating criteria?	<input checked="" type="radio"/> Yes ✓ <input type="radio"/> No If yes, provide HS of non-originating material/components used in production of good: - Antimony concentrate (HS code 2617.1000)
f.	Has process rule been applied in ascertaining origin of good subject to this request?	<input type="radio"/> Yes <input checked="" type="radio"/> No ✓ If yes, provide the rule applied:

For POLYCAB INDIA LTD.

Authorized Signatory

g.	Has the CoO been issued retrospectively?	<input type="radio"/> Yes <input checked="" type="radio"/> No ✓ If yes, provide reasons for same:
h.	Has the consignment in question been directly shipped from country of origin?	<input checked="" type="radio"/> Yes ✓ <input type="radio"/> No If not, then has it been ascertained that same is as per provisions of the concerned agreement? How has it been ascertained that goods have met the prescribed conditions of Direct Shipment? - Bill of Lading and Export Declaration can be provided

For and on behalf of
Thal Unipet Industries Co., Ltd.

Authorized Signatory

For POLYCAB INDIA LTD.

Authorized Signatory

9. Origin Criteria in terms of Notification No. 189/2009-Cus. (N.T.), dated 31-12-2009:

9.1 Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 [hereinafter referred to as "Rules of Origin"] were notified vide Notification No. 189/2009-Cus. (N.T.), dated 31-12-2009, as amended.

9.2 In terms of Rule-5 read with Rule-3 of the said “Rules of Origin” for the products not wholly produced or obtained in the exporting party (of the Agreement), to qualify for the preferential tariff under the said Preferential Tariff Agreement, the goods must have at least 35% RVC and non-originating materials must have undergone processing to warrant change in CTSH level (6 digit) with final process of manufacture within territory of export. Rule-3 and Rule-5 of the said “Rules of Origin” read as follows:-

“Rule 3. Origin criteria.- The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:-

- (a) products which are wholly obtained or produced in the exporting party as specified in rule 4; or
- (b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6

“Rule 5. Not wholly produced or obtained products.-(1) For the purpose of clause (b) a/ rule 3, a product shall be deemed to be originating, if-

- (i) the AIFTA content is not less than 35 percent of the FOB value; and
- (ii) the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level i.e. at six digit of the Harmonized System

9.3. It appears that the verification conducted in the matter revealed that the producer/exporter i.e. M/s Thai Unipet Industries Co. Ltd. had produced the Antimony Trioxide (CTSH 282580) from the non-originating material i.e. Antimony Oxide (CTSH 282580). It appears that there was no change in classification of produced goods in Tariff Sub- heading (CTSH) level.

10. Verification under CAROTAR, 2020:

10.1 From the letter dated 03.12.2021 of the Deputy Commissioner of Customs, ICD Tumb addressed to Deputy Director, DRI Surat, it appears that the Deputy Commissioner of Customs, ICD Tumb vide letter F.No. VIII/ICD-Tumb/32/CCO-Verification/2020-2021 dated 05.11.2020 has forwarded proposal for verification of COO under the provisions of Rule 6(2) of the CAROTAR, 2020 in respect of COO certificates issued by Thailand authority under AIFTA, details of which are as under:

BE No.& date	Name of Importer	Reference No of the Certificate of Origin	COO certificate issuing agency	COO Certificate issuing authority	Name of exporting country	Benefit under Notif. No.
9178364 dated 14.10.2020	M/s Polycab India Ltd. (IEC:- 0397003498)	AI2020-0035331	Asean-India Free Trade Area Preferential Tariff	Department of Foreign Trade, Government of Thailand	Thailand	046/2011-Cus dated 01.06.2011
9178366 dated 14.10.2020	M/s Polycab India Ltd. (IEC:- 039700349)	AI2020-0035333	Asean-India Free Trade Area Preferential	Department of Foreign Trade, Government	Thailand	046/2011-Cus dated 01.06.2011

	8)		al Tariff	nt of		
				Thailand		

10.2 The OSD (FTA Cell-1) vide letter dated 01.07.2021 has forwarded the verification report No 0307.07/487 dated 29.06.2021 to the Principal Commissioner of Customs, Custom House, Ahmedabad enclosing letter dated 29.06.2021 received from the Director of Import Administration and Origin Certification Division, Department of Foreign Trade 563 Nonthaburi Road, Nonthaburi 11000 Thailand wherein they confirmed that:

“(1) The above mentioned certificates of Origin Form AI were authentically issued by the Department of Foreign Trade.

(2) The exporter, THAI UNIPET INDUSTRIES CO. LTD. declared that the products shown on the above mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI. The questionnaires and relevant documents are herewith enclosed (Attachment)”

10.3 The scanned image of verification report No 0307.07/487 dated 29.06.2021 is as below:

[SCANNED IMAGE OF VERIFICATION REPORT NO 0307.07/487 DATED 29.06.2021]

No. 0307.07/ 489



Import Administration and
Origin Certification Division
Department of Foreign Trade
563 Nonthaburi Road
Nonthaburi 11000 Thailand
Tel. 662-547-4823 Fax 662-547-4807

19 June 2021

Dear Sir,

Subject: Response to Verification of the Certificates of Origin Form AI

Reference is made to your letter No. Ban/Com/206/01/2021 dated 25 January 2021, requesting verification genuineness and authenticity of the Form AI No. AI2020-0035331 dated 6 October 2020 and No. AI2020-0035333 dated 6 October 2020.

Having conducted an administrative cross-control, we hereby confirm that

1) The above-mentioned Certificates of Origin Form AI were authentically issued by the Department of Foreign Trade.

2) The exporter, THAI UNIPET INDUSTRIES CO., LTD. declared that the products shown on the above-mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI. The questionnaires and relevant documents are herewith enclosed. (Attachment)

Please be assured of our full co-operation.

Yours sincerely,

(Miss Lilin Kovudhikulrungsri)
Director of Import Administration
and Origin Certification Division

Monoranjan Sahu
Embassy of India, Bangkok

Attachment: The questionnaires and relevant documents.

Questionnaire

1. Certificate of Origin (COO No.) : AJ2020-0035331 dated 6 October 2020

2. Issuing authority : Department of Foreign Trade, Government of Thailand

3. Exporter's name: Thai Unipet Industries Co., Ltd.

4. Brief Description of the Commercial activity of the Exporter.

The Company is a manufacturer of antimony trioxide products and have a manufacturing facility in Thailand. The Company sources raw materials from Myanmar, Vietnam and China and manufactures them into the final product in Thailand. The final product, antimony trioxide, will be exported to India.

5. Please provide the Certificate of Business Registration of the Exporter.

Please find Attachment 1 for the Certificate of Business Registration of the Exporter.

6. The country where the goods covered under the COO was produced.

The country where the goods covered under the COO was produced is Thailand.

7. Please provide the following information for each of the material/components used to produce the goods certified as originating:

Sl No.	HS Code (at Six digit level)	Description of Component, Materials, Inputs, Parts	Supplier's Name and Address	Country of Origin of the Component, Materials, Inputs, Parts	Quantity	Value	%
1	270111	Anthracite 1-3mm	Thailand Anthracite Co., Ltd. Address: 149/96, Moo 2, Surasak, Srimacha, Chonburi, 20110	Thailand	0.1604	30.8012	0.5923%
2	271019	Fuel oil (FO)	Siam Oil Products Co., Ltd. Address: 121 R S Tower, 22 nd Floor, Room No. 121/071, Ratchadaphisek Rd., Dindaeng, Bangkok, 10400	Thailand	171.9060	37.3851	0.7189%
3	280920	Polyphosphoric Acid 105%	Youngsun Chemicals Co., Ltd. Address: No.950, Yinhai Rd, Liangqing District, Nanning, Guangxi, China, 530221	China	0.0825	81.5247	1.5678%
4	283620	Soda Ash - China	Tai-liang Chemical Corporation Limited Address: 59 Moo 2, Phuchao Saming Phray Rd., Bang Ya Phraek, Phra Pradaeng, Samut Prakan, 10130	China	0.1834	56.1653	1.0801%
5	282580	Antimony Oxide	Youngsun Chemicals Co., Ltd. Address: No.950, Yinhai Rd, Liangqing District, Nanning, Guangxi, China, 530221	Myanmar	1.1671	4,435.1261	85.2900%

7(A) Where cumulation is being claimed, copies of supporting certificates or origin by other FTA member may please be provided.

Supporting certificate of origin (Form A1) is not available.

7(B) Where components/material are originating, the basis of origin of the components/material may be provided.

Please find column namely 'Country of Origin of the Component, Materials, Inputs, Parts' in question no 7's table for basis of origin of the components/materials.

7(C) A break-up of costs other than the raw material being incurred may also be provided.

No.	Description	Value (in USD)
1	Other cost	31.3334
2	Labor cost	52.4931
3	Utility cost	9.6914
4	Transportation cost	62.2837
Total value of other cost		155.8016

8. Please provide a brief description of the production processes carried out for the goods certified as originating.

- 1) Prepare the furnace by burning anthracite breeze for 12 days and increase the temperature by using a diesel burner for 3 days until the temperature reaches 900°C.
- 1) Put antimony oxide with soda ash, anthracite breeze, and Polyphosphoric Acid 105% respectively in the furnace. The semi-finished product will be antimony metal.
- 2) Put antimony metal in the blast furnace and use a root blower to compress the air/oxygen into the blast furnace, which will trigger a spontaneous combustion. The finished product will be antimony trioxide which will be processed for packing and cleaning for sales afterwards.

9. The value addition attributable to the above processes.

Profit per 1 unit of product: 403.1960 USD

10. Is the De-Minimis Rule used for determination of origin.

No.

11. Is the good being verified or any component/material used in its production a fungible goods? If so, details of the inventory management method may please be provided.

No.

12. Final outcome of the verification-whether the consignment covered under the COO meets the Rules of Origin under FTA to be considered as Origins.

No, the consignment covered under the COO does not meet the Rules of Origin under AFTA to be considered as Origins.

Thai Unipet Industries Co., Ltd.
บริษัท ไทย ยูนิเพต อุตสาหกรรม จำกัด
泰国聚邦实业有限公司

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Questionnaire

1. Certificate of Origin (COO No.) : AI2020-0035333 dated 6 October 2020

2. Issuing authority : Department of Foreign Trade, Government of Thailand

3. Exporter's name: Thai Unipet Industries Co., Ltd.

4. Brief Description of the Commercial activity of the Exporter.

The Company is a manufacturer of antimony trioxide products and have a manufacturing facility in Thailand. The Company sources raw materials from Myanmar, Vietnam and China and manufactures them into the final product in Thailand. The final product, antimony trioxide, will be exported to India.

5. Please provide the Certificate of Business Registration of the Exporter.

Please find Attachment I for the Certificate of Business Registration of the Exporter.

6. The country where the goods covered under the COO was produced.

The country where the goods covered under the COO was produced is Thailand.

7. Please provide the following information for each of the material/components used to produce the goods certified as originating:

Sl No.	HS Code (at Six digit level)	Description of Component, Materials, Inputs, Parts	Supplier's Name and Address	Country of Origin of the Component, Materials, Inputs, Parts	Quantity	Value	%
1	270111	Anthracite 1-3mm	Thailand Anthracite Co., Ltd. Address: 149/96, Moo 2, Surasak, Sriracha, Chonburi, 20110	Thailand	0.1604	30.8012	0.5923%
2	271019	Fuel oil (FO)	Siam Oil Products Co., Ltd. Address: 121 R 5 Tower, 22 nd Floor, Room No. 121/071, Ratchadaphisek Rd., Dindang, Bangkok, 10400	Thailand	171.9060	37.3851	0.7189%
3	280920	Polyphosphoric Acid 105%	Yongseun Chemicals Co., Ltd. Address: No.950, Yinhai Rd, Liangqing District, Nanning, Guangxi, China, 530221	China	0.0825	81.5247	1.5678%
4	283620	Soda Ash - China	Tai-Hang Chemical Corporation Limited Address: 59 Moo 2, Phuchao Saming Phray Rd., Bang Ya Phraek, Phra Pradaeng, Samut Prakan, 10130	China	0.1834	56.1653	1.0801%
5	282580	Antimony Oxide	Yongseun Chemicals Co., Ltd. Address: No.950, Yinhai Rd, Liangqing District, Nanning, Guangxi, China, 530221	Myanmar	1.1671	4,435.1261	85.2909%

7(A) Where cumulation is being claimed, copies of supporting certificates or origin by other FTA member may please be provided.

Supporting certificate of origin (Form AI) is not available.

7(B) Where components/material are originating, the basis of origin of the components/material may be provided.

Please find column namely 'Country of Origin of the Component, Materials, Inputs, Parts' in question no.7's table for basis of origin of the components/materials.

7(C) A break-up of costs other than the raw material being incurred may also be provided.

No.	Description	Value (in USD)
1	Other cost	31.3334
2	Labor cost	52.4931
3	Utility cost	9.6914
4	Transportation cost	63.3282
Total value of other cost		156.8461

8. Please provide a brief description of the production processes carried out for the goods certified as originating.

- 1) Prepare the furnace by burning anthracite breeze for 12 days and increase the temperature by using a diesel burner for 3 days until the temperature reaches 900°C.
- 1) Put antimony oxide with soda ash, anthracite breeze, and Polyphosphoric Acid 105% respectively in the furnace. The semi-finished product will be antimony metal.
- 2) Put antimony metal in the blast furnace and use a root blower to compress the air/oxygen into the blast furnace, which will trigger a spontaneous combustion. The finished product will be antimony trioxide which will be processed for packing and cleaning for sales afterwards.

9. The value addition attributable to the above processes.

Profit per 1 unit of product: 402.1515 USD

10. Is the De-Minimis Rule used for determination of origin.

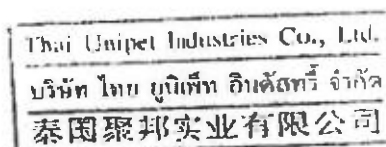
No.

11. Is the good being verified or any component/material used in its production a fungible goods? If so, details of the inventory management method may please be provided.

No.

12. Final outcome of the verification-whether the consignment covered under the COO meets the Rules of Origin under FTA to be considered as Origins.

No, the consignment covered under the COO does not meet the Rules of Origin under AIFTA to be considered as Origins.



See
Chamuk
18/10/22

10.4 Moreover, the Additional Director, DRI, Ahmadabad Zonal Unit vide letter F.No DRI/AZU/SRU-31/2003/Pt. I dated 24.02.2022 has forwarded 6 COO certificates as a sample with a list of COO certificates issued by the Thailand authorities against the export of Antimony Trioxide to various importers in India. The verification report was received through OSD(Cell-4), Directorate of International Customs (FTA Cell), CBIC, New Delhi vide letter dated 29.11.2022 which attached the verification report No 0307/3835 dated 09.11.2022 issued by the Deputy Director General, Department of Foreign Trade, Ministry of Commerce, 563 Nonthaburi, Thailand wherein they confirmed that:

(1) The above mentioned certificates of Origin Form AI were authentically issued by the Department of Foreign Trade.

(2) The word "Issued Retroactively" on the Certificate of Origin Form AI No.1)-3) were compliance with Article 10(b) of the Operational Certification Procedure (OCP) under ASEAN-India FTA.

(3) The exporter, THAI UNIPET INDUSTRIES CO. LTD. declared that the products shown on the above mentioned Form AI were not qualified as originating goods in

Thailand. We, hence, revoked those products on those Forms AI. The questionnaires and relevant documents are herewith enclosed (Attachment)"

The Country of Origin Form AI2018-0050990 dated 7.11.2018 appeared at the serial no. 2 in the verification report No 0307/3835 dated 09.11.2022 pertained to M/s. Polycab India Limited, Unit 4, Plot No.105, Halol Vadodara Road, Village: Nurpura, Taluka Halol, Dist- Panchmahal, Gujarat – 389350. The scanned image of verification report No 0307/3835 dated 09.11.2022 is as under:

[SCANNED IMAGE OF VERIFICATION REPORT NO 0307/3835 DATED 09.11.2022]



No. 0307/ 3835

Department of Foreign Trade
Ministry of Commerce
563 Nonthaburi Road
Nonthaburi 11000 Thailand
Tel. 662-547-4823 Fax 662-547-4807

9 November 2022

Dear Sir,

Subject: Response to Verification of the Certificates of Origin Form AI

Reference is made to your letter No. Ban/Com/206/01/2022 dated 26 April 2022, requesting verification genuineness and authenticity of the following 6 Forms AI,

- 1) No. AI2018-0012721 dated 21 March 2018
- 2) No. AI2018-0050990 dated 7 November 2018
- 3) No. AI2019-0037008 dated 13 August 2019
- 4) No. AI2020-0010624 dated 28 February 2020
- 5) No. AI2020-0047765 dated 25 December 2020
- 6) No. AI2021-0014857 dated 19 March 2021

Having conducted an administrative cross-control, we hereby confirm that

1) The above-mentioned Certificates of Origin Form AI were authentically issued by the Department of Foreign Trade.

2) The word "Issued Retroactively" on the Certificates of Origin Form AI No. 1) – 3) were compliance with Article 10 (b) of the Operational Certification Procedures (OCP) under ASEAN-India FTA.

3) The exporter, THAI UNIPET INDUSTRIES CO., LTD. declared that the products shown on the above-mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI. The questionnaires and relevant documents are herewith enclosed. (Attachment)

Please be assured of our full co-operation.

Yours sincerely,

(Mrs. Manatsanih Jirawat)
Deputy Director-General
For Director-General

Dharmendra Singh
Embassy of India, Bangkok

Attachment: The questionnaires and relevant documents.

10.5 It appears from the verification report issued by the Competent authority of Department of Foreign Trade, Ministry of Commerce that 'the product' i.e. 'Antimony Trioxide' exported by M/s. Thai Unipet Industries Co. Ltd. was not qualified as originating goods in Thailand in terms of Determination of Origin of goods under the

11. Summary of the Investigation:

From the investigation conducted and from the foregoing discussions, it appears that:

- a. The Importer i.e. M/s. Polycab India Limited had imported Thailand origin Antimony Trioxide, manufactured by M/s. Thai Unipet Industries Co. Ltd, Thailand, during the period from 21.06.2018 to 14.04.2021. After April, 2021 they have not imported Thailand origin Antimony Trioxide. In addition to the manufacturer, the Importer imported identical goods from the supplier M/s. Youngsun Chemicals Co. Ltd., China wherein manufacturer of said goods were Thai Unipet Industries Co. Ltd, Thailand. All the consignments were directly shipped from Thailand to India.
- b. The Importer has classified their imported goods i.e. Antimony Trioxide under Tariff Heading 28258000 of the First schedule to the Customs Tariff Act, 1975 and availed the benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended.
- c. The verification of Origin criteria was conducted in terms of Customs Administration of Rules of Origin under Trade Agreement Rules, (CAROTAR), 2020 by the Deputy Commissioner of Customs, ICD Tumb, in case of two live consignment of Antimony Trioxide imported by the Importer. The Competent Authority of Thailand reported that the exporter, THAI UNIPET INDUSTRIES CO. LTD. had declared that the products shown on the Form AI were not qualified as originating goods in Thailand, hence, revoked those products on those Forms AI.
- d. From the questionnaire submitted by the manufacturer M/s. Thai Unipet Industries Co. Ltd, Thailand it appears that the Antimony Oxide, which was the main raw material of the Company's product, was a mineral extracted from a mine in Myanmar. The manufacturer imported the Antimony Oxide (CTSH-282580) from Myanmar through supplier Youngsun Chemicals Co. Ltd, China without cover of Certificate of Origin (Form A1).
- e. The manufacturer declared in the questionnaire that value content of Antimony Oxide imported by them from Myanmar was around 85.29% and the CTSH was 282580. However, the finished product i.e. Antimony Trioxide was classified under CTSH 282580. Thus, it appears that there was no change in classification of produced goods in six digit tariff sub- heading (CTSH) level.
- f. In the meantime, Importer has paid Duty 'under protest' on two live consignments of Antimony Trioxide manufactured by the same supplier i.e. Thai Unipet Industries Co. Ltd. imported at ICD Tumb. Further, the Importer had also cleared four consignments of Thailand origin Antimony Trioxide at ICD Tumb without availing the benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, and paid appropriate Customs Duty.
- g. After detection of evasion of Duty by the Importer at ICD Tumb during October, 2020, the Importer had changed the port of import for the identical goods and started import of Thailand origin Antimony Trioxide at Nhava Sheva sea port. On being asked the reason he stated that the consignments were destined to Nhava Sheva Port, thus they filed Bill of Entry at Nhava Sheva for clearance of goods.

- h. The Importer had cleared 6 consignments of Antimony Trioxide at Nhava Sheva Port during the period from 06.01.2021 to 14.04.2021 after availing the benefit of Notification No 46/2011-Cus dated 01.06.2011, as amended.
- i. Further verification of Origin criteria was conducted by DRI with the Thailand authority in terms of Customs Administration of Rules of Origin under Trade Agreement Rules, (CAROTAR), 2020. The competent authority of Department of Foreign Trade, Ministry of Commerce reported that the exporter, Thai Unipet Industries Co. Ltd. declared that the products shown on the Form AI were not qualified as originating goods in Thailand, thus they revoked those products on those Forms AI.
- j. The goods imported by the Importer from M/s. Youngsun Chemicals Co. Ltd, China and M/s. Thai Unipet Industries Co. Ltd, Thailand are identical goods manufactured by same manufacturer and did not fulfill the criteria of origin in terms of Rule 5 of Origin of Rules.
- k. The Importer had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended and short paid the Customs Duties of Rs 2,69,67,319/- (details as per Annexure-A attached to this Show Cause Notice) at ICD Tumb & Nhava Sheva sea port.

12. Main Legal Provisions relating to the case:

12.1 Sub-section (4) of Section 46 of the Customs Act, 1962, specifies that, the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods.

12.2 Section 17. Assessment of duty. -

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation. - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue

to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]

12.3 Section 28DA. Procedure regarding claim of preferential rate of duty. -

(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall -

- (i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;
- (ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;
- (iii) furnish such information in such manner as may be provided by rules;
- (iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.

(2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.

(3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.

(4) Where importer fails to provide the requisite information for any reason, the proper officer may, -

- (i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;
- (ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.

(5) Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.

(6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules.

(7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

(8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing:

Provided that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules.

(9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.

(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-

- (i) the tariff item is not eligible for preferential tariff treatment;

- (ii) complete description of goods is not contained in the certificate of origin;
- (iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;
- (iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".

(11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.

Explanation-For the purposes of this Chapter,-

- (a) "certificate of origin" means a certificate issued in accordance with a trade agreement certifying that the goods fulfil the country of origin criteria and other requirements specified in the said agreement;
- (b) "identical goods" means goods that are same in all respects with reference to the country of origin criteria under the trade agreement;
- (c) "Issuing Authority" means any authority designated for the purposes of issuing certificate of origin under a trade agreement;
- (d) "trade agreement" means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union.

12.4 SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: -

- (a) ...
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;
- (p)...
- (q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.

12.5 SECTION 112. Penalty for improper importation of goods, etc.-

Any person, -

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

- (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value

thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

12.6 Section 28 (4) of the Customs Act, 1962-Recovery of duties not levied or short-levied or erroneously refunded. –

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent. of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

12.7 SECTION 28AA. Interest on delayed payment of duty. --

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section 2, whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

12.8 Section 114A of the Customs Act, 1962 read as Penalty for short-levy or non-levy of duty in certain cases. –

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28], and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation - For the removal of doubts, it is hereby declared that -

- (i) the provisions of this section shall also apply to cases in which the order determining the duty or interest sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;
- (ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

12.9 Section 114 AA of the Customs Act, 1962 read as –Penalty for use of false and incorrect material. -

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

13. Obligations under self-assessment and demand invoking extended period:

13.1 The subject Bills of Entry as mentioned in Annexure-A to this Show Cause Notice, filed by the Importer, wherein they had declared the description, classification of goods and Country of origin, were self-assessed by them. However, the verification report conducted under the provisions of CAROTAR, 2020 established that the manufacturer of goods in question had not fulfilled the origin criteria in terms of Rules of origin. Shri Chetan Deshmukh, Vice President of the Importer has accepted and admitted the same during his statement dated 18.10.2021 recorded under Section 108 of the Customs Act, 1962.

13.2 Vide Finance Act, 2011, "Self-Assessment" has been introduced w.e.f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of Duty on import and export of the goods by the Importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the Importer or exporter to ensure that he declares the correct classification, applicable rate of Duty, value, benefit or exemption Notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. Section 28DA of Customs Act, 1962 was introduced vide Finance Bill 2020 wherein Importer making claim of preferential rate of Duty, in terms of any trade agreement shall possess sufficient information as regards to origin criteria. Therefore, by not self-assessing the subject goods properly, it appears that the Importer willfully evaded Customs Duty on the impugned goods. In the present case, the Importer has wrongly availed the benefit of exemption Notification wherein imported goods had not fulfilled the origin criteria by the manufacturer. After detection of wrong availment of exemption Notification by the Customs authority at ICD Tumb, the Importer had changed the port of import since December, 2020 from ICD Tumb to Nhava Sheva and availed exemption Notification at Nhava Sheva for the identical goods imported from Thailand. The Importer appears to have indulged in suppression of facts with intent to evade the payment of applicable Customs Duties.

13.3 From the verification report, it appears that the Competent authority of Department of Foreign Trade, Ministry of Commerce reported that the exporter, Thai Unipet Industries Co. Ltd. declared that the products shown on the Form AI were not qualified as originating goods in Thailand, thus they revoked those products on those Forms AI. As the Country of origin (COO) Certificate had revoked by the issuing authority of Thailand, the preferential tariff treatment to the imports of Antimony Trioxide by the Importer is liable for rejection in terms of Section 28DA (11) of the Customs Act, 1962.

13.4 Therefore, it appears that the Importer knowingly and deliberately availed the exemption Notification on the goods manufactured by M/s. Thai Unipet Industries Co. Ltd, Thailand. It appears to be indicative of their mensrea. Moreover, the Importer appears to have suppressed the said facts from the Customs authorities and also willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended during filing of the Bill of Entry at ICD Tumb and Nhava Sheva and thereby caused evasion of Customs Duty. Accordingly, it appears that provisions of Section 28(4) of the Customs Act, 1962 are invokable in this case. For the same reasons, the Importer also appears liable to penalty under **Section 114A** of the Customs Act, 1962.

14. Mis-declaration by the Importer – liability of goods to confiscation, demand of differential Duty and liability to Penalties:-

14.1 Sub-section (4) of Section 46 of the Customs Act, 1962, specifies that, the Importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the content of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods. From the verification report discussed above, it appears that the Importer has suppressed the relevant facts and intentionally evaded Customs Duty on the impugned goods and hence, contravened the provisions of section 46 of the Customs Act, 1962.

14.2 As mentioned in the foregoing paras, the imported goods under the subject Bill of Entry, as mentioned in Annexure-A to this Show Cause Notice, have been found to be not corresponding to the condition for claiming the full exemption against Country of Origin (COO) Certificate in terms of Notification No.46/2011-Cus dated 01.06.2011, as amended. Hence, the goods imported during the period from 21.06.2018 to 26.03.2020 having assessable value of **Rs.16,26,15,215/- (Rupees**

Sixteen Crore, Twenty Six Lakh, Fifteen Thousand, Two Hundred and Fifteen only) are liable for confiscation under Section 111(o) of the Customs Act, 1962. Further, the goods imported during the period from 27.03.2020 to 14.04.2021 having assessable value of **Rs 11,43,98,580/- (Rupees Eleven Crore, Forty Three Lakh, Ninety Eight Thousand, Five Hundred and Eighty only)** are liable for confiscation under Section 111(q) of the Customs Act, 1962. Therefore, it appears that the Importer is also liable for imposition of penalty under Section 112(a) and 112 (b) of the Customs Act, 1962.

14.3 As discussed above, it appears that the Importer was aware that the Thailand based manufacturer of Antimony Trioxide did not fulfill the origin criteria of products and he was not eligible for exemption benefit as provided under Notification No. 46/2011-Cus dated 01.06.2011, as amended. The Importer has intentionally submitted the documents for claiming the exemption benefit before Customs. Therefore, it appears that they are also liable for imposition of penalty under **Section 114AA** of the Customs Act, 1962.

15. PAYMENT DURING INVESTIGATION:

15.1 The Importer vide letter dated 09.11.2020 addressed to the Deputy Commissioner of Customs, ICD Tumb informed that they wished to deposit Duty under protest in respect of Bill of Entry No.9178366 & 9178364 (WBE) both dated 14.10.2020 and paid differential Duty of Rs.7,61,520/-along with interest of Rs. 5,320/-against the Bill of Entry No.9178366 dated 14.10.2020 vide e-Challan No. 2032739260 dated 12.11.2020and differential Duty of Rs.7,61,521/- along with interest of Rs.58,835/-in respect of Ex-Bond Bill of Entry No.2615213 dated 04.02.2021vide TR-6 Challan No. 164 dated 07.08.2021 at ICD Tumb.

15.2 During investigation the Importer had paid differential Duty of Rs. 2,54,44,278/- along with interest of Rs.67,67,924/- through various Demand Draft/Challans as detailed below:

Sr.no	DD No. & date	Challan no. & date	BCD Amount (in Rs.)	Interest (Rs.)	Challan Amt (Rs)
1	510578 dt 29.10.2021	24/2021-22 dt 06.11.2021	18441783	5857157	24298941
2	510580 dt 29.10.2021	25/2021 dt 09.11.2021	498692	252284	750976
3	510579 dt 29.10.2021	26/2021 dt 09.11.2021	6503803	658483	7162285
	TOTAL		2,54,44,278	67,67,924	3,22,12,202

16. The imports of Antimony Trioxide by the Importer have been taken place at ICD Tumb (INSAJ6) and Nhava Sheva (INNSA1) and highest Duty demand pertains to the ICD Tumb (INSAJ6), falls under the jurisdiction of the Commissioner of Customs, Ahmedabad. Therefore in terms of Section 110AA read with Notification No.28/2022 Customs (NT) dated 31.03.2022 the proper officer in the instant case is the Commissioner of Customs, Ahmedabad.

17. Therefore Show Cause Notice No. VIII/10-01/Commr./O&A/2023-24 dated 30.05.2023 was issued to M/s. Polycab India Limited, Unit 4, Plot No.105, Halol Vadodara Road, Village: Nulpura, Taluka Halol, Dist- Panchmahal, Gujarat – 389350 calling upon to show cause in writing to the Commissioner of Customs, Ahmedabad having his office at 1st Floor, Customs House, Near Akashwani Bhavan, Navrangpura, Ahmedabad within 30 days of the receipt of this Notice as to why:

- The exemption benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed by the Importer against the goods imported under various Bills of Entry at ICD Tumb & Nhava Sheva, as mentioned in Annexure-A to the

Show Cause Notice, should not be disallowed in terms of Section 28DA(11) of the Customs Act, 1962 as the Competent authority of Thailand had revoked Form A1 (Certificate of Origin) issued in respect of said goods exported to India;

- ii. The 2 consignments (appearing at Sr.No.24 & 25 of Annexure -A) i.e. 40 MT of Antimony Trioxide imported vide Bill of Entry No. 9178366 dated 14.10.2020 and Ex-Bond Bill of Entry No. 2615213 dated 04.02.2021 totally valued at **Rs. 1,56,45,000/- (Rupees One Crore, Fifty Six Lakh, Forty Five Thousand only)** should not be held liable for confiscation under Section 111(q) of the Customs Act, 1962. Since the said goods have been released provisionally to the Importer on execution of PD Bond in respect of Bill of Entry No. 9178366 dated 14.10.2020, why fine in lieu of confiscation should not be imposed under Section 125 of the Customs Act, 1962;
- iii. The impugned goods having total assessable value of **Rs.26,13,69,065/- (Twenty Six Crore, Thirteen Lakh, Sixty Nine Thousand and Sixty Five only)** (assessable value of Rs.16,26,15,215/- of the goods imported during period 21.06.2018 to 26.03.2020 and assessable value of Rs.9,87,53,850/- of the goods imported during 27.03.2020 to 14.04.2021) as mentioned in Annexure-A (appearing at Sr. No. 1 to 23 and 26 to 32) should not be held liable for confiscation as per the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962. However, as the said goods are not physically available for confiscation, why fine should not be imposed in lieu of confiscation under Section 125 of the Customs Act, 1962;
- iv. The differential Customs Duty amounting to **Rs.2,69,67,319/- (Rupees Two Crore, Sixty Nine Lakh, Sixty Seven Thousand, Three Hundred and Nineteen Only)** as mentioned in "Annexure-A" attached to this Show Cause Notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;
- v. The Interest at the applicable rate should not be recovered from them on the said differential Customs Duty as mentioned at (iv) above under Section 28 AA of the Customs Act, 1962;
- vi. The Customs Duty amount of **Rs.2,69,67,319/- (Rupees Two Crore, Sixty Nine Lakh, Sixty Seven Thousand Three Hundred and Nineteen only)** already paid by them should not be appropriated and adjusted against the aforesaid demand;
- vii. The interest amount of **Rs.68,32,079/- (Rupees Sixty Eight Lakh, Thirty Two Thousand and Seventy Nine only)** already paid by them should not be appropriated and adjusted against the interest payable on the demand mentioned at (iv) above;
- viii. Penalty should not be imposed on the Importer under Section 112(a) &(b) of the Customs Act, 1962;
- ix. Penalty should not be imposed on the Importer under Section 114A of the Customs Act, 1962;
- x. Penalty should not be imposed on the Importer under Section 114AA of the Customs Act, 1962.

18. Defense submissions:- M/s. Polycab India Limited submitted their reply to the Show Cause Notice No. VIII/10-01/Commr/O&A/2023-24 dated 30.05.2023 vide their letter dated 15.06.2023 wherein they have interalia submitted as under:

- That they have imported Antimony Trioxide classified under Tariff Heading 28258000 from Thai Unipet Industries Co. Ltd, Thailand and Youngsun Chemicals Co Ltd., China between 21.06.2018 and 14.04.2021;
- That they have availed the benefit of Notification No.46/2011-Cus dated 01.06.2011 under AIFTA on their eligibility under the treaty. That they have followed the guidelines of CAROTAR Rules, 2020 with utmost attention and had furnished the details of the origin criteria w.r.t goods under supply

with the department in true spirit and to the best of knowledge and information available. They had obtained a Certificate from the Supplier in this regard and the same was submitted to the department;

- During the verification of the origin criteria by Customs, ICD Tumb full cooperation with clear intent of not availing any benefit, unduly. They had deposited the duties under protest when the authenticity of COO was questioned. Further, not availed any benefit under the treaty until the investigation was completed;
- When summoned by ICD Tumb and later by DRI, Surat, they were the first importer to attend the hearing and accept the duty liability and after having being heard by the Hon'ble DRI and Deputy Commissioner ICD, Tumb about the investigation and the facts of the case, they immediately agreed to pay the duties that were foregone under the treaty together with interest;
- That they were not aware that supplier was not qualifying to the origin criteria till it was proved and when the supplier was proved guilty by the Department, they had immediately stopped buying from him and black listed him;
- That they have never wrong intent of claiming any benefit without the merits of its eligibility and in this case also, they did not avail the benefit and they had obtained enough information from the supplier w.r.t origin criteria of the goods under supply before they availed the benefit;
- That there was no intent of evasion of duty, whatsoever and would not levy any penalty.

19. Personal Hearing: The Personal Hearing was fixed on 27.02.2024 for M/s. Polycab India Limited. Shri Chetan Deshmukh, Senior Vice President(EXIM) and Shri Pramod Gaokwad, DGM(Imports) of M/s. Polycab India Limited attended the Personal Hearing on 27.02.2024 on behalf of M/s. Polycab India Limited wherein they reiterated the submission as detailed in their written submission dated 15.06.2023.

20: Discussions and Findings: I have carefully gone through the Show Cause Notice No.VIII/10-01/Commr/O&A/2023-24 dated 30.05.2023, written submission dated 15.06.2023 filed by M/s. Polycab India Limited and records of personal hearing held on 27.02.2024. Issues for consideration before me in these proceedings are as under-

- i. Whether, the exemption benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed by the Importer against the goods imported under various Bills of Entry at ICD Tumb & Nhava Sheva, as mentioned in Annexure-A to the Show Cause Notice, should be disallowed in terms of Section 28DA(11) of the Customs Act, 1962 as the Competent authority of Thailand had revoked the Form A1 (Certificate of Origin) issued in respect of said goods exported to India?
- ii. Whether, the 2 consignments (appearing at Sr.No.24 & 25 of Annexure -A) i.e. 40 MT of 'Antimony Trioxide' imported vide Bill of Entry No. 9178366 dated 14.10.2020 and Ex-Bond Bill of Entry No. 2615213 dated 04.02.2021 totally valued at **Rs. 1,56,45,000/- (Rupees One Crore, Fifty Six Lakh, Forty Five Thousand only)** should be held liable for confiscation under Section 111(q) of the Customs Act, 1962? Since the said goods have been released provisionally to the Importer on execution of PD Bond in respect of Bill of Entry No. 9178366 dated 14.10.2020, whether fine in lieu of confiscation should be imposed under Section 125 of the Customs Act, 1962?
- iii. Whether, the impugned goods having total assessable value of **Rs.26,13,69,065/- (Rupees Twenty Six Crore, Thirteen Lakh, Sixty Nine Thousand and Sixty Five only)** (assessable value of Rs.16,26,15,215/- of the goods imported during period 21.06.2018 to 26.03.2020 and assessable value of Rs.9,87,53,850/- of the goods imported during 27.03.2020 to 14.04.2021) as

mentioned in Annexure-A (appearing at Sr. No. 1 to 23 and 26 to 32) should be held liable for confiscation as per the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962. However, as the said goods are not physically available for confiscation, whether fine should be imposed in lieu of confiscation under Section 125 of the Customs Act, 1962?

- iv. Whether, the differential Customs Duty amounting to **Rs.2,69,67,319/- (Rupees Two Crore, Sixty Nine Lakh, Sixty Seven Thousand, Three Hundred and Nineteen Only)** as mentioned in "Annexure-A" attached to this Show Cause Notice should be demanded and recovered under Section 28(4) of the Customs Act, 1962?
- v. Whether, the Interest at the applicable rate should be recovered on the differential Customs Duty as mentioned at (iv) above under Section 28 AA of the Customs Act, 1962;
- vi. Whether, the Customs Duty amount of **Rs.2,69,67,319/- (Rupees Two Crore, Sixty Nine Lakh, Sixty Seven Thousand, Three Hundred and Nineteen only)** already paid by them should be appropriated and adjusted against the aforesaid demand;
- vii. Whether, the interest amount of **Rs.68,32,079/- (Rupees Sixty Eight Lakh, Thirty Two Thousand and Seventy Nine only)** already paid should be appropriated and adjusted against the interest payable on the demand mentioned at (iv) above;
- viii. Whether, Penalty should be imposed on the Importer under Section 114A of the Customs Act, 1962?
- ix. Whether, penalty should be imposed on the Importer under Section 112(a) & (b) of the Customs Act, 1962?
- x. Whether, Penalty should be imposed on the Importer under Section 114AA of the Customs Act, 1962?

21. The basic issue in the instant case is whether the exemption benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed by the Importer against the goods imported under various Bills of Entry at ICD Tumb & Nhava Sheva, as mentioned in Annexure-A to the Show Cause Notice, should be disallowed in terms of Section 28DA(11) of the Customs Act, 1962 as the Competent authority of Thailand revoked the Form A1 (Certificate of Origin) issued in respect of said goods exported to India?

21.1 I find that the importer had imported "Antimony Trioxide" falling under Customs Tariff Item 28258000 of the Customs Tariff Act, 1975 by availing the benefit of Notification No. 46/2011-Cus dated 01.06.2011 (Indo-ASIAN FTA) as amended, however the benefit of said Notification No. 46/2011-Cus dated 01.06.2011 is available provided the goods are originating from any of the countries of ASEAN (which includes Thailand also) in accordance with the provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Member States of the Association of South East Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published vide Notification No.189/2009-Customs (N.T.) dated 31.12.2009. It is worth to reproduce the relevant extract of Notification No.46/2011-Cus dated 01.06.2011 and relevant provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Member States of the Association of South East

Asian Nations (ASEAN) and the Republic of India] Rule, 2009, published vide Notification No.189/2009-Customs (N.T.) dated 31.12.2009

21.1.1 Relevant extracts of the Notification No. 46/2011-Cus dated 01.06.2011 [AIFTA – INDO - ASEAN FTA] are reproduced below:

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 153/2009-Customs dated the 31st December, 2009 [G.S.R. 944 (E), dated the 31st December, 2009], except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description as specified in column (3) of the Table appended hereto and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in, -column (4) of the said Table, when imported into the Republic of India from a country listed in APPENDIX I; or column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX II.

Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31st December 2009.

Table-A				
S. No.	Chapter, Heading, Sub-heading and Tariff item	Description	Rate (in percentage unless otherwise specified)	
(1)	(2)	(3)	(4)	(5)
1	0101	All goods	20.0 (as amended from time to time)	26.0 (as amended from time to time)
**	***	***	****	***
967	72	All Goods	0.0	0.0

Appendix I	
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S.No.	Name of the Country
1.	Malaysia
2.	Singapore
3.	Thailand
4.	Vietnam
5.	Myanmar
6.	Indonesia
7.	Brunei Darussalam

21.1.2 The relevant provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the Notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31st December 2009, are reproduced as under:

3. Origin criteria.-

The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:

- a) products which are wholly obtained or produced in the exporting party as specified in rule 4; or,*
- b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6.*

4. Wholly produced or obtained products.-

For the purpose of clause (a) of rule 3, the following shall be considered as wholly produced or obtained in a party:-

- (a) plant and plant products grown and harvested in the party;*

Explanation.- For the purpose of this clause, "plant" means all plant life, including forestry products, fruit, flowers, vegetables, trees, seaweed, fungi and live plants;

- (b) live animals born and raised in the party;*

- (c) products obtained from live animals referred to in clause (b);*

Explanation 1.- For the purpose of clauses (b) and (c), "animals" means all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, and living organisms.

Explanation 2.- For the purpose of this clause, "products" means those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung;

- (d) products obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the party;*

- (e) minerals and other naturally occurring substances, not included in clauses (a) to (d), extracted or taken from the party's soil, water, seabed or beneath the seabed;*

- (f) products taken from the water, seabed or beneath the seabed outside the territorial water of the party, provided that that party has the right to exploit such water, seabed and beneath the seabed in accordance with the United Nations Convention on the Law of the Sea, 1982;*

- (g) products of sea-fishing and other marine products taken from the high seas by vessels registered with the party and entitled to fly the flag of that party;*

- (h) products processed and/or made on board factory ships registered with the party and entitled to fly the flag of that party, exclusively from products referred to in clause (g);*

- (i) articles collected in the party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes; and*

Explanation.- For the purpose of this clause, "article" means all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for disposal for the recovery of raw materials and such manufacturing or processing operations shall include all types of processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations;

- (j) products obtained or produced in the party solely from products referred to in clauses (a) to (i).*

5. Not wholly produced or obtained products.-

- (1) For the purpose of clause (b) of rule 3, a product shall be deemed to be originating, if -*

- (i) the AIFTA content is not less than 35 percent of the FOB value; and*

(ii) **the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level i.e. at six digit of the Harmonized System:**

Provided that the final process of the manufacture is performed within the territory of the exporting party.

(2) *For the purpose of clause (i) of sub-rule (1), the formula for calculating the 35 per cent. AIFTA content is as follows:*

.....
6. Cumulative rule of origin-

Unless otherwise provided for, products which comply with origin requirements referred in rule 3 and which are used in a party as materials for a product which is eligible for preferential treatment under these rules shall be considered as products originating in that party where working or processing of the product has taken place.

13. Certificate of Origin-

Any claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin as per the specimen in the Attachment to the Operational Certification Procedures issued by a Government authority designated by the exporting party and notified to the other parties in accordance with the Operational Certification Procedures as set out in Annexure III annexed to these rules.

21.2 I find that DRI, Regional Unit, Surat developed the intelligence that certain importers engaged in the import of Antimony Trioxide from Thailand from a supplier namely M/s.Thai Unipet Industries Co. Ltd (hereinafter referred to as 'TUIC'), were wrongly availing the benefit of preferential rate of Duty under Notification No. 46/2011-Cus dated 01.06.2011 as amended, as the said items did not qualify to be 'originating goods' from Thailand, in terms of Rule 3 read with Rules 5 & 6 of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide Notification No.189/2009-Customs (N.T.) dated 31.12.2009

21.3 I find that Certificates of Origin (COOs) submitted by the importer to the Customs, purported to have been issued by M/s.Thai Unipet Industries Co. Ltd in respect of the goods exported by M/s.Thai Unipet Industries Co. Ltd from Thailand, were forwarded to Department of Foreign Trade, Ministry of Commerce, the Agency responsible for issuance and monitoring of Certificates of Origin in Thailand, for verification. The OSD (FTA Cell-1) vide letter dated 01.07.2021 has forwarded the verification report No 0307.07/487 dated 29.06.2021 to the Principal Commissioner of Customs, Custom House, Ahmedabad enclosing letter dated 29.06.2021 received from the Director of Import Administration and Origin Certification Division, Department of Foreign Trade 563 Nonthaburi Road, Nonthaburi 11000 Thailand wherein they confirmed that:

"(1) The above mentioned certificates of Origin Form AI were authentically issued by the Department of Foreign Trade.

(2) The exporter, THAI UNIPET INDUSTRIES CO. LTD. declared that the products shown on the above mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI. The questionnaires and relevant documents are herewith enclosed (Attachment)"

Further, in the Questionnaires attached to the said verification report No 0307.07/487 dated 29.06.2021 for the Certificate of Origin (COO No. AI2020-0035331 dated 06.10.2020 and COO No. AI2020-0035333 dated 06.10.2020 at Sr. No. 12 it has been specifically mentioned against the Question "Final outcome of the verification whether the consignment covered under the COO meet the Rules of Origin under FTA to be considered as Origins" that **"No, the consignment covered**

under the COO does not meet the Rules of Origin under AIFTA to be considered as Origins”.

21.4 Further, the Additional Director, DRI, Ahmedabad Zonal Unit vide letter F.No DRI/AZU/SRU-31/2003/Pt.I dated 24.02.2022 had forwarded 6 Certificate of Origin (COO) certificates as a sample with a list of COO certificates issued by the Thailand authorities against the export of Antimony Trioxide to various importers in India. The verification report was received through OSD(Cell-4), Directorate of International Customs (FTA Cell), CBIC, New Delhi vide letter dated 29.11.2022 which attached the verification report No 0307/3835 dated 09.11.2022 issued by the Deputy Director General, Department of Foreign Trade, Ministry of Commerce, 563 Nonthaburi, Thailand wherein they confirmed that:

“(1) The above mentioned certificates of Origin Form AI were authentically issued by the Department of Foreign Trade.

(2) The word “Issued Retroactively” on the Certificate of Origin Form AI No.1)-3) were compliance with Article 10(b) of the Operational Certification Procedure (OCP) under ASEAN-India FTA.

(3) The exporter, THAI UNIPET INDUSTRIES CO. LTD. declared that the products shown on the above mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI.”

Thus, I find that importer is not eligible for the benefit of preferential rate of Duty under Notification No. 46/2011-Cus dated 01.06.2011.

21.5 I find that the manufacturer M/s.Thai Unipet Industries Co. Ltd, Thailand in their letter dated 10.05.2021 having subject of ‘Post-clearance audit of production of finished product exported with FORM AI (Certificate of Origin)’ addressed to ‘whom it may concern’, have specifically clarified as under:

“1. The antimony Oxide, which is the main raw material of the Company’s product, is a mineral extract from a mine in Myanmar which is a member country of AIFTA. Therefore, the raw material absolutely qualifies under the Wholly Produced or Obtained Products rule of origin. However, the Company’s supplier, which has exported the raw material from Myanmar to Thailand could not provide Form AI for Cumulative rule of origin to the Company. This is because the Myanmar authority which is authorized to issue a certificate of origin, agreed to issue only Form D under the ASEAN Trade in Goods Agreement (“ATIGA”) for products exported from Myanmar to Thailand, but refused the exporter’s request to issue a certificate of origin under other free trade agreements including Form AI. For your reference, please see Attachment 1. As a result, **the Company had to classify the cost of Antimony Oxide as non-originating material under the rules of origin of AIFTA. This is a key factor that resulted in the significant change of RVC.**

2. The Regional Value Content (RVC) calculation in No.(8) Regional Value Content (RVC) of No.3 Cost of Production per 1 unit of product (in \$US) specified on the Letter of Confirmation was based on the actual production cost of the ANTIMONY TRIOXIDE for export with Form AI no. AI2020-0035331 and Form AI no. AI2020-0035333. The actual product cost has been fluctuated accordingly to the economy. For example, the total value of originating materials had been decreased from US\$155.6977 in 2018 to US\$ 68.1863 in 2020 for production per one unit of product. **In addition, there were changes of some raw material usage amount and total value of raw materials. Nevertheless, the Company had not amended the RVC calculation based on the changes at the time of exportation.**

As the clarification provide, the RVC of ANTIMONY TRIOXIDE on the Letter of Confirmation and the RVC on the audited Form are not the same. Nevertheless, the Company has no intention to violate the rule of origin of AIFTA."

Thus, I find that exporter M/s.Thai Unipet Industries Co. Ltd, have also admitted the contravention of rule of origin of AIFTA. Further, I find that that exporter M/s.Thai Unipet Industries Co. Ltd, Thailand has admitted that Regional Value Content (RVC) of ANTIMONY TRIOXIDE on the Letter of Confirmation and the RVC on the audited Form are not the same. Further, I find that Custom Tariff Item for "Antimony Oxide" is 28258000 and M/s.Thai Unipet Industries Co. Ltd has admitted that they had imported 'Antimony Oxide' which is main raw material was a mineral extracted from a mine in Myanmar. Thus, Antimony Oxide which was procured from Myanmar was also under same Customs Tariff Item No. 28258000 and when it was further exported to India as 'Antimony Trioxide' they have declared the CTH as 28258000 in their 'Certificate of Country of Origin'. Thus, this is clear violation of the Rule 5 (2) (ii) of Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 notified vide Notification No.189/2009-Customs (N.T.) dated 31.12.2009 which says that "the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level i.e. at six digit of the Harmonized System". Thus, I find that importer is not eligible for the exemption benefit of Notification No.46/2011-Cus dated 01.06.2011.

21.6 I find that Sub-Section 11 of Section 28DA of the Customs Act, 1962 states that "Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria." The Director of Import Administration and Origin Certification Division, Department of Foreign Trade 563 Nonthaburi Road, Nonthaburi 11000 Thailand have confirmed that goods exported by exporter THAI UNIPET INDUSTRIES CO. LTD. to India were not qualified as originating goods in Thailand and therefore, they revoked those products on those Forms AI. Thus, I find that impugned goods covered under the Bills of Entry as mentioned in Annexure-A to the Show Cause Notice are not eligible for the exemption benefit of Notification No.46/2011-Cus dated 01.06.2011 by the importer.

21.7 Further, I find that ratio of decision of Hon'ble Tribunal Bangalore rendered in case of M/s. Surya Light Vs. Commissioner of Customs reported in 2008 (226) ELT 74 and M/s. Alfa Traders Vs. Commissioner of Customs, Cochin reported in 2007(217)ELT 437 (Tri. Bang) are squarely applicable in present case as in the said cases, Hon'ble Tribunal has held that if the certificate of origin (COO) is not correct on facts, it can be rejected and may be basis of disallowing the benefit of exemption notification.

Thus, in view of the above discussion and findings, I find that the importer is not eligible for the benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed for the goods imported under Bills of Entry filed at ICD Tumb & Nhava Sheva, as mentioned in Annexure-A to the Show Cause Notice.

22. Whether the goods imported by M/s. Polycab India Ltd. under 32 Bills of Entry having total assessable value of Rs. 27,70,14,065/-as mentioned in Annexure-A to the Show Cause Notice are liable for confiscation or otherwise:

22.1 Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(o) and 111 (q) of the Customs Act, 1962 having assessable value of Rs.26,13,69,065/- (Twenty Six Crore, Thirteen Lakh, Sixty Nine Thousand and

Sixty Five only) (assessable value of Rs.16,26,15,215/- of the goods imported during period 21.06.2018 to 26.03.2020 and assessable value of Rs.9,87,53,850/- of The goods imported during 27.03.2020 to 14.04.2021) as mentioned in Annexure-A (appearing at Sr. No. 1 to 23 and 26 to 32). Further, Show Cause Notice also proposes confiscation under Section 111 (q) of the Customs Act, 1962 in respect of goods covered under Bill of Entry No. 9178366 dated 14.10.2020 and Ex-Bond Bill of Entry No. 2615213 dated 04.02.2021 totally valued at Rs. 1,56,45,000/- appearing at Sr. No. 24 & 25 of the Annexure-A to Show Cause Notice.

22.2 Section 111 (o) of Customs Act, 1962 provides for confiscation of any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper office. Section 111(q) of the Customs Act, 1962 inserted vide Section 113 of the Finance Act, 2020 provides for confiscation of any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder. Further, in terms of Section 46 (4) of the Customs Act, 1962, the importer was required to make declaration as regards the truth of content of the Bills of Entry submitted for assessment of Customs Duty but the importer contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they mis-declared the Country of Origin as Thailand in the declaration of Bills of Entry. The Importer thereby, has wrongly availed/taken the Country of Origin benefit knowingly and intentionally to evade Customs Duty. Accordingly, the importer made wilful mis-statement of actual Country of Origin by suppressing the facts of the correct Country of Origin of imported goods and therefore, I find that by wrong availment of Exemption Notification No. 46/2011-Cus dated 01.06.2011 & suppression of facts, the importer has contravened the provisions of Section 46(4) of the Customs Act, 1962, as they did not declare true particular pertaining to Country of Origin and wrongly claimed preferential rate of Duty. All these acts on the part of the importer have rendered the imported goods covered in the Show Cause Notice liable for confiscation under Section 111(o) and 111(q) of the Customs Act, 1962. It is to reiterate that in the present case it is an admitted fact that the particulars submitted by the importer with respect to Country of Origin certificate was false. The submission of invalid Country of Origin Certificate in respect of impugned goods was done with an intention to avoid higher rate of Customs Duty applicable to the imported goods viz. "Antimony Trioxide". M/s Polycab India Ltd. mis-declared the particulars with regard to the said goods imported by them thereby contravening the provisions of Section 47 of the Customs Act, 1962, since the Bills of Entry have not been filed in compliance to Section 46 of the Customs Act, 1962. Thus, the said goods imported by them are liable for confiscation under Section 111(o) & 111 (q) of the Customs Act, 1962.

22.3 As the impugned imported goods are found to be liable for confiscation under Section 111 (o) and 111 (q) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 (1) of the Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the imported goods as detailed in Annexure-A to the Show Cause Notice. Section 125 (1) *ibid* reads as under:

"SECTION 125. Option to pay fine in lieu of confiscation. — (1) *Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit"*

I find that imported goods covered under Bills of Entry as appearing at Sr. No.1 to 23 and 26 to 32 of the Annexure-A to the Show Cause Notice involving total assessable value of Rs. 26,13,69,065/- were not available for confiscation and only the

goods covered under Bill of Entry No.918366 dated 14.10.2020 and Ex Bond Bill of Entry No.2615213 dated 04.02.2021 having total assessable value of Rs. 1,56,45,000/- were released on execution of PD bond filed in respect of Bill of Entry No.918366 dated 14.10.2020.

22.5 I find that even in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed interalia in Para 23 as under:

“ 23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).”

22.6 Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held interalia as under:-

174. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act....”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to

the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

22.7 Therefore, in view of the above, I find that though imported goods covered under Bills of Entry as appearing at Sr. No.1 to 23 and 26 to 32 of the Annexure-A to the Show Cause Notice involving total assessable value of Rs. 26,13,69,065/- were not available for confiscation, however in such cases redemption fine is imposable in light of the aforesaid judgments.

22.8 In respect of imported goods covered under Bill of Entry No.918366 dated 14.10.2020 and Ex Bond Bill of Entry No.2615213 dated 04.02.2021 having total assessable value of Rs. 1,56,45,000/-, which was provisionally released on execution of PD Bond and payment of duty vide TR-6 Challan No. dtd 12.11.2020 and 07.08.2021 respectively, for imposition of redemption fine, I rely on the ratio of the decision of Hon'ble Supreme Court rendered in the matter of Waston Components Ltd. Vs. Commissioner of Customs, wherein Hon'ble Supreme Court has held that:

"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine."

Therefore, in view of above findings, I find that redemption fine is imposable on the impugned imported goods as mentioned in Bill of Entry No.918366 dated 14.10.2020 and Ex Bond Bill of Entry No.2615213 dated 04.02.2021 having total assessable value of Rs. 1,56,45,000/-.

23. Whether the differential Customs Duty amounting to Rs.2,69,67,319/- (Rupees Two Crore, Sixty Nine Lakh, Sixty Seven Thousand, Three Hundred and Nineteen Only) as mentioned in "Annexure-A" attached to this Show Cause Notice should be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28 AA of the Customs Act, 1962?

23.1 I find that the imported goods viz. 'Antimony Trioxide' imported by the Importer do not meet the criterion of the "Originating Goods" as prescribed under Notification No. 189/2009-Cus (N.T.) dated 31.12.2009. The Importer has submitted Certificates of Origin fraudulently obtained by the supplier of the importer and further, the importer declared incorrect and wrong facts to Customs and thereby fraudulently availed benefit of the Notification No.46/2011-Cus dated 01.06.2011 as amended, with clear intent to evade payment of due Customs Duty. Shri Chetan Deshmukh, Vice President (Head-EXIM) of M/s. Polycab India Ltd. in his statement recorded on 18.10.2021 have admitted that they were not eligible for benefit of the Notification No.46/2011-Cus dated 01.06.2011. Thus the Importer has intentionally and knowingly adopted the modus operandi by way of willful mis-statement and suppression of facts to intentionally evade payment of due Customs Duty by

fraudulently availing the benefit of Notification No.46/2011-Cus dated 01.06.2011 as amended. Had the investigation in the matter not been initiated by the DRI, these acts/omissions done by them would never have come to the notice of the Department. These acts of omissions on the part of the importer tantamount to willful mis-statement and suppression of facts on their part and provides sufficient ground to invoke the proviso of Section 28(4) for **EXTENDED PERIOD** upto five years for issuance of Demand of Duty-cum-Show Cause Notice. Thus, I find that the impugned goods does not qualify to be originating goods of Thailand and therefore, the benefit of the Notification No.46/2011-Cus dated 01.06.2011 as amended is not available to the Importer and consequently, the Duty amounting to **Rs. 2,69,67,319/-**, not paid on account of the above stated mis-statement/suppression, is recoverable under Section 28 (4) of the Customs Act, 1962.

23.2 From the observation made in the foregoing paras, I find that the importer availed the concessional rate of Customs Duty and had taken benefit of Notification No. 46/2011- Customs dated 01.06.2011. The importer had contravened the provisions of Section 46 (4) of the Customs Act, 1962 as much as, they had mis declared the Country of Origin of the imported goods as 'Thailand' in the declaration in the form of Bills of Entry filed under the provisions of Section 46 (4) of the Customs Act, 1962. Also, it is a case of wilful mis-statement and suppression of facts of correct Country of Origin and thus the importer is ineligible for availing exemption under Notification No. 46/2011-Cus dated 01.06.2011.

23.3 I find that the importer have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have intentionally availed/taken a wrong Customs Duty benefit exemption based upon invalid document namely Country of Origin Certificate in terms of Notification No. 46/2011- Cus dated 01.06.2011 and thereby suppressed material facts from the Department and produced invalid Country of Origin Certificate as discussed supra for the imported goods, while filing the declaration at the time of importation of the imported goods. They suppressed the material fact that Antimony Oxide (which is a raw material for imported goods viz. Antimony Trioxide) was obtained from a mine in Myanmar.

23.4 In view of above discussion and judicial pronouncement, I find that the **EXTENDED PERIOD** stipulated under Section 28(4) of the Customs Act, 1962 is rightly invoked in the instant case. Accordingly the total Customs Duty leviable on the said imported goods amounting to **Rs. 2,69,67,319/-** in respect of Bills of Entry as mentioned in Annexure-A to the Show Cause Notice is recoverable in terms of Section 28 (4) of the Customs Act, 1962.

23.5 It has also been proposed in the Show Cause Notice to demand and recover interest on the aforesaid differential Customs Duty under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 ibid. I have already held that Customs Duty amounting to **Rs.2,69,67,319/-** is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(4) ibid should be recovered under Section 28AA of the Customs Act, 1962.

I find that importer have paid the differential duty of Rs. 2,69,67,319/- alongwith interest of Rs. 68,32,079/- as mentioned in Para 15 of the Show Cause Notice. In view of the aforesaid discussion as the differential duty is confirmed under Section 28 (4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962, the said payment of differential duty alongwith interest made by the importer is required to be appropriated against their duty and interest liability.

24. Whether penalty should be imposed on M/s. Polycab India Ltd., under Section 114A of the Customs Act, 1962?

24.1 Penalty under Section 114A of the Customs Act, 1962: Now, I proceed to consider the proposal of penalty under Section 114A of the Customs Act, 1962 against the importer. I find that demand of differential Custom Duty totally amounting to **Rs.2,69,67,319/-** has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of wilful mis-statement and suppression of facts by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of penalty equal to the amount of Duty plus interest in terms of Section 114A *ibid*.

I find that in present case, Shri Chetan Deshmukh, Vice President (Head-EXIM) of M/s. Polycab India Ltd in his statement dated 18.12.2021 has admitted that they were not eligible for the benefit of exemption notification No. 46/2011-Cus dated 01.06.2011 as amended. I find the importer failed to ascertain that impugned goods manufactured from the raw material viz. 'Antimony Oxide' were not originated from Thailand. Importer, is one of leading companies in manufacture of manufacture of wires and cables and therefore, they are well aware of the availability of the raw material required by them. However, they imported the 'Antimony Trioxide', the raw material of which viz. Antimony Oxide is extracted from the mine of Myanmar Country and produced the Certificate of Country of origin of Thailand with clear intent to evade the payment of customs duty by way of submitting the fraudulently obtained Certificate of Country of Origin by their supplier M/s. Thai Unipet Industries Co. Ltd. from the issuing authority of Thailand. I find that onus is on the importer to prove that they were eligible for the exemption notification. Said Certificate issuing authority revoked the said Certificate as well the supplier M/s. Thai Unipet Industries Co. Ltd. admitted that that RVC of Antimony Trioxide on the Letter of Confirmation and the RVC on the audited Form were not the same. Thus I find that with the connivance of supplier M/s. Thai Unipet Industries Co. Ltd., the importer evaded the customs duty by way of submitting the fraudulently obtained COO Certificate from issuing authority and therefore, I find that importer has produced the Country of Origin Certificate in violation of the Notification No. 46/2011- Cus dated 01.06.2011 read with Notification No. 189/2009-Customs (NT) dated 31.12.2009. viz. Customs Tariff {Determination of origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association Trade Agreement (ASEAN) and the Republic of India} Rules,2009. Hence, I find that the importer has knowingly and intentionally made, signed or caused to be made and presented to the Customs authorities such documents which they knew were obtained fraudulently based on incorrect/ false information from the issuing authority. Hence, for the said act of contravention on their part, the importer is liable for penalty under Section 114A of the Customs Act, 1962.

25. Whether penalty should be imposed on M/s. Polycab India Ltd., under Section 112(a) and 112(b) of the Customs Act, 1962?

25.1 I find that penalty has also been proposed on the importer under Section 112 (a) and 112 (b) of the Customs Act, 1962. In this regard, I find that fifth proviso to Section 114A stipulates that "where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114/" Hence, I refrain from

imposing penalty on the importer under Section 112 (a) and 112 (b) of the Customs Act, 1962.

26. Whether penalty should be imposed on M/s. Polycab India Ltd., under Section 114AA of the Customs Act, 1962?

26.1 I find that importer has produced the Country of Origin Certificate which was incorrect in as much as it falsely shows the Country of Origin as Thailand in violation of the Notification No. 46/2011-Cus dated 01.06.2011 read with Notification No. 189/2009- Customs (N.T.) dated 31.12.2009 viz. Customs Tariff {Determination of origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association Trade Agreement (ASEAN) and the Republic of India} Rules, 2009. The Country of origin certificates were obtained fraudulently by M/s. Thai Unipet Industries Co. Ltd. from the issuing authority by mis-stating the facts of RVC which is mandatory requirement. M/s. Thai Unipet Industries Co. Ltd in his letter dated 10.05.2021 has admitted that the 'Antimony Oxide' which is main raw material is extracted from a mine in Myanmar and therefore, company had to classify the cost of Antimony Oxide as non-originating material under the rules of origin of AIFTA which is key factor that resulted in the significant change of RVC. Further, Supplier has admitted that RVC of Antimony Trioxide on the Letter of Confirmation and the RVC on the audited Form were not the same. Thus, it proves that M/s. Thai Unipet Industries Co. Ltd. has fraudulently obtained the Certificate of Country of Origin by mis-stating the facts before the Certificate issuing authority. I find that importer has availed the benefit of Notification No. 46/2011- Cus dated on the basis of said Certificate of Origin which is obtained fraudulently by their supplier from the issuing authority. I find the importer failed to ascertain that impugned goods manufactured from the raw material viz. 'Antimony Oxide' were not originated from Thailand. Importer, is one of leading companies in manufacture of wires and cables and therefore, they are well aware of the availability of the raw material required by them. However, they imported the 'Antimony Trioxide', the raw material of which viz. Antimony Oxide is extracted from the mine of Myanmar Country and produced the Certificate of Country of origin of Thailand with clear intent to evade the payment of customs duty by way of submitting the fraudulently obtained Certificate of Country of Origin by their supplier M/s. Thai Unipet Industries Co. Ltd. from the issuing authority of Thailand. I find that onus is on the importer to prove that they were eligible for the exemption notification. Said Certificate issuing authority revoked the said Certificate as well the supplier M/s. Thai Unipet Industries Co. Ltd. admitted that that RVC of Antimony Trioxide on the Letter of Confirmation and the RVC on the audited Form were not the same. Thus I find that with the connivance of supplier M/s. Thai Unipet Industries Co. Ltd., the importer evaded the customs duty by way of submitting the fraudulently obtained COO Certificate from issuing authority and therefore, I find that importer has produced the Country of Origin Certificate in violation of the Notification No. 46/2011- Cus dated 01.06.2011 read with Notification No. 189/2009-Customs (NT) dated 31.12.2009. viz. Customs Tariff {Determination of origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association Trade Agreement (ASEAN) and the Republic of India} Rules, 2009. Hence, I find that the importer has knowingly and intentionally made, signed or caused to be made and presented to the Customs authorities such documents which they knew were obtained fraudulently based on incorrect/ false information supplied to issuing authority. Hence, for the said act of contravention on their part, the importer is liable for penalty under Section 114AA of the Customs Act, 1962 .

26.2 Further, I rely on the decision of Principal Bench, New Delhi in case of **Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi)** wherein it has been held that "*Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority*".

27. In view of the forgoing findings and discussions, I pass the following order:

:: ORDER ::

27.1 I disallow the benefit of Notification No.46/2011-Cus. dated 01.06.2011 as amended, claimed by M/s. Polycab India Ltd. against the goods imported under various Bills of Entry at ICD Tumb& Nhava Sheva, as mentioned in Annexure-A to the Show Cause Notice.

27.2 I hold the 2 consignments (appearing at Sr.No.24 & 25 of Annexure -A) i.e. 40 MT of Antimony Trioxide imported vide Bill of Entry No. 9178366 dated 14.10.2020 and Ex-Bond Bill of Entry No. 2615213 dated 04.02.2021 totally valued at **Rs. 1,56,45,000/- (Rupees One Crore, Fifty Six Lakh and Forty Five Thousand only)** liable for confiscation under Section 111(q) of the Customs Act, 1962. However, I give M/s. Polycab India Ltd. the option to redeem the goods on payment of Fine of **Rs.15,00,000/- (Rupees Fifteen Lakh only)** under Section 125 of the Customs Act, 1962.

27.3 I hold the impugned goods having total assessable value of **Rs.26,13,69,065/- (Twenty Six Crore, Thirteen Lakh, Sixty Nine Thousand and Sixty Five only)** (assessable value of Rs.16,26,15,215/- of the goods imported during period 21.06.2018 to 26.03.2020 and assessable value of Rs.9,87,53,850/- of the goods imported during 27.03.2020 to 14.04.2021) as mentioned in Annexure-A (appearing at Sr. No. 1 to 23 and 26 to 32) liable for confiscation under Section 111(o) and 111 (q) of the Customs Act, 1962. However, I give M/s. Polycab India Ltd. the option to redeem the goods on payment of Fine of **Rs.2,60,00,000/- (Rupees Two Crore and Sixty Lakh only)** under Section 125 of the Customs Act, 1962.

27.4 I confirm the differential Customs Duty amounting to **Rs.2,69,67,319/- (Rupees Two Crore, Sixty Nine Lakh, Sixty Seven Thousand, Three Hundred and Nineteen Only)** as detailed in "Annexure-A" attached to Show Cause Notice and order for recovery of the same from M/s. Polycab India Ltd. in terms of the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962.

27.5 I order to appropriate the amount of differential duty of Rs.2,69,67,319/- and Interest of Rs. 68,32,079/-deposited/paid by M/s. Polycab India Ltd. as mentioned in Para 15.1 and 15.2 of the Show Cause Notice against their Duty and interest liability as confirmed in Para 27.4 above.

27.6 I impose a penalty of **Rs.2,69,67,319/- (Rupees Two Crore, Sixty Nine Lakh, Sixty Seven Thousand, Three Hundred and Nineteen Only)** on M/s. Polycab India Ltd. plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at Para 27.4 above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

27.7 I refrain from imposing penalty under Section 112(a) & 112(b) of the Customs Act, 1962 on M/s. Polycab India Ltd. for the reasons discussed in para 25.1 above.

27.8 I impose penalty of **Rs. 25,00,000/- (Rupees Twenty Five Lakh only)** on M/s. Polycab India Ltd. under Section 114AA of the Customs Act, 1962.

28. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

29. The Show Cause Notice No. VIII/10-01/Commr./O&A/2023-24 dated 30.05.2023 is disposed off in above terms.


(Shiv Kumar Sharma)
Principal Commissioner

DIN- 20240571MN0000333ADB

F. No. VIII/10-01/Commr./O&A/2023-24

Date: 17.05.2024

To,

M/s. Polycab India Limited,

Unit 4, Plot No.105,

Halol Vadodara Road,

Village: Nulpura,

Taluka Halol, Dist- Panchmahal,

Gujarat - 389350.

Copy to:

1. The Pr. Chief Commissioner of Customs, Gujarat Zone, Ahmedabad for information please.
2. The Additional Director General, DRI, Ahmedabad Zonal Unit, Unit No. 15, Magnet Corporate Part, 100 Ft. Thaltej Hebatpur Road, Off. Sola Over Bridge, Ahmedabad 380054.
3. The Additional Commissioner (TRC), Customs, Ahmedabad for information.
4. The Deputy Commissioner of Customs, ICD, Tumb for information please.
5. The Deputy Commissioner of Customs, Nhavasheva, Jawaharlal Nehru Customs House, Nhava Sheva, Tal-Uran, Dist-Raigad, Maharashtra- 400707 for information please.
6. The Superintendent of Customs(Systems) in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.
7. Guard File.